



(21)

Office - Supreme Court, U. S.

FILED

MAY 13 1944

CHARLES ELMORE DROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 877.

H. HIGHFILL AND VALLEY CREDIT COMPANY,
A CORPORATION, PETITIONERS,

VS.

LULU J. DILATUSH, RESPONDENT.

BRIEF.

**Brief of Petitioners in Reply to That of Respondent in
Opposition to the Issuance of a Writ of Certiorari to
the United States Circuit Court of Appeals for
the Eighth Circuit.**

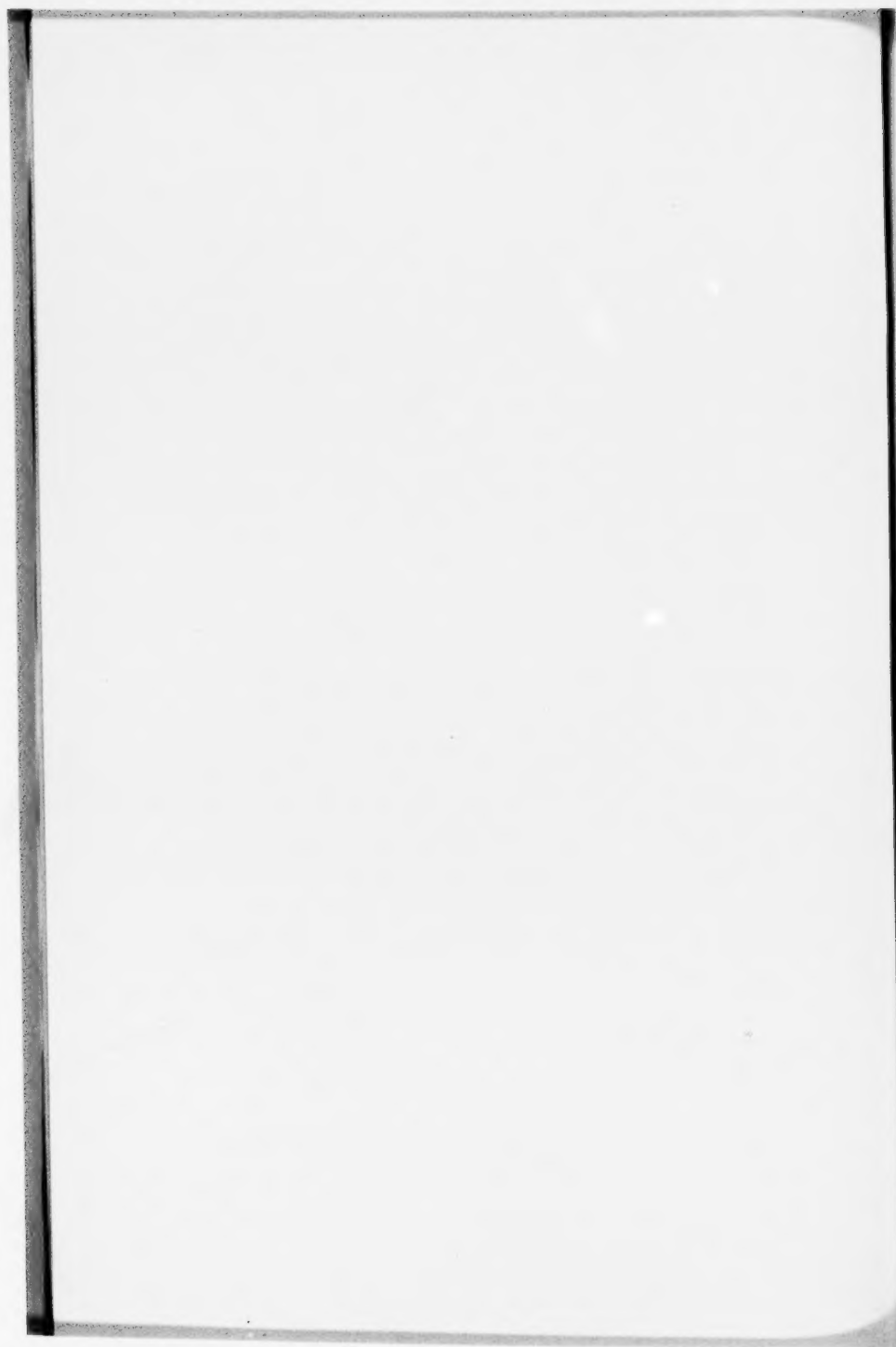
ARCHER WHEATLEY,
Jonesboro, Arkansas,
Attorney for Petitioners.

HERBERT GANNAWAY,
Memphis, Tennessee,
Of Counsel.



INDEX

| | |
|--|---|
| I. Argument | 1 |
| 1. The desire of R. E. Dilatush that respondent obtain judgment is conceded | 1 |
| 2. Respondent's argument is an unfair attempt to arouse prejudice | 2 |
| II. Conclusion | 4 |



Supreme Court of the United States

OCTOBER TERM, 1943.

No. 877.

H. HIGHFILL AND VALLEY CREDIT COMPANY,
A CORPORATION, PETITIONERS,

VS.

LULU J. DILATUSH, RESPONDENT.

BRIEF.

**Brief of Petitioners in Reply to That of Respondent in
Opposition to the Issuance of a Writ of Certiorari to
the United States Circuit Court of Appeals for
the Eighth Circuit.**

I.

ARGUMENT.

1.

**The Desire of R. E. Dilatush That Respondent Obtain
Judgment Is Conceded.**

Respondent on page 4 (point 2) of her Brief concedes that R. E. Dilatush, although sued by Respondent

on a charge of fraud, wishes her as plaintiff to recover a judgment. This should be sufficient to dissipate any thought of there being a "controversy" between plaintiff mother and defendant son. The facts, however, go much farther, as established by the evidence of Respondent, her attorney, and her son. The sworn testimony of these three persons shows without any dispute whatever:

a. R. E. Dilatush selected his own attorney to file this suit against himself (Rec. 25).

b. R. E. Dilatush gave this attorney the statement of facts on which the complaint was framed (Rec. 25).

c. R. E. Dilatush turned his files over to Respondent or her attorneys (Rec. 25).

d. R. E. Dilatush voluntarily traveled from California to Arkansas to testify for Respondent (Rec. 14).

e. Respondent testified that she relied on R. E. Dilatush to establish her case (Rec. 30).

f. Respondent testified that R. E. Dilatush "has looked after this litigation for me" (Rec. 30).

A prayer for judgment against R. E. Dilatush under the circumstances is only a pretense of "controversy" which this Court will not permit to override the "realities of the record."

2.

Respondent's Argument Is an Unfair Attempt to Arouse Prejudice.

Petitioners unequivocally deny all charges of fraud and of indebtedness. R. E. Dilatush, authorized by Respondent to "look after all her business affairs" (Rec. 28) helped make the sale of the land in question. Ap-

plication of the proceeds on what he owed Valley Credit Company left him still in debt to the company he now accuses of fraud (Rec. 35). Is it likely that petitioners would have advanced him so much with a realization of additional indebtedness of \$23,000 and interest to his mother? Mr. Highfill testified:

"There was never any agreement made to reimburse Mrs. Lulu Dilatush or pay her anything in connection with the notes. We would not have considered the transaction at all if there had been any suggestion that we would be liable to her for the notes" (Rec. 38). "Nothing was said in our conversation with reference to reimbursing his mother. He said he could arrange that. He said he could deliver the notes" (Rec. 37).

Beyond cavil, at that time, everything was gratefully accepted as being for the benefit of R. E. Dilatush rather than for petitioners' gain. The land had been sold under execution for a nominal sum, and his title was gone. The Valley Credit Company liens were all prior to that of Respondent (Rec. 36-38). Valley could have foreclosed and have wiped out Respondent's lien, and have had the land, or have forced her to pay their liens off. Instead, R. E. Dilatush was given a new opportunity to operate the land. Certainly, this was for his benefit.

This statement, while outside the jurisdictional question at issue, is in reply to Respondent's effort to arouse prejudice against petitioners.

II.

CONCLUSION.

The determination of whether there is a sufficient controversy to support Federal jurisdiction should not be influenced by ineffectual attempts to obtain jurisdiction elsewhere. During all this time petitioners could have been sued in Mississippi County, Arkansas, where they were doing business.

Defendants in a Federal Court are not required to keep in their midst one whose activity in behalf of their opponent makes him in effect a legal saboteur. This is the holding of the cases on which petitioners rely, and is the justification for the Petition.

Petitioners therefore respectfully renew their plea for the issuance of a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

ARCHER WHEATLEY,
Jonesboro, Arkansas,
Attorney for Petitioners.

HERBERT GANNAWAY,
Memphis, Tennessee,
Of Counsel.

